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**Subject to Legal Review for Clarity and Consistency**

**Annex I -- Schedule of the United States**

**Sector:** Atomic Energy

**Obligations Concerned:** National Treatment (Article )  
Local Presence (Article )

**Level of Government:** Central

**Measures:** *Atomic Energy Act of 1954*, 42 U.S.C. §§ 2011 et seq.

**Description:** Investment

A license issued by the United States Nuclear Regulatory Commission is required for any person in the United States to transfer or receive in interstate commerce, manufacture, produce, transfer, use, import or export any nuclear "utilization or production facilities" for commercial or industrial purposes. Such a license may not be issued to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government (42 U.S.C. §§ 2133(d)). A license issued by the United States Nuclear Regulatory Commission is also required for nuclear "utilization and production facilities" for use in medical therapy or for research and development activities. The issuance of such a license to any entity known or believed to be owned, controlled or dominated by an alien, a foreign corporation or a foreign government is also prohibited (42 U.S.C. § 2134(d)).

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**Sector:** Business Services

**Obligations Concerned:** National Treatment (Article )  
Local Presence (Article )

**Level of Government:** Central

**Measures:** *Export Trading Company Act of 1982*, 15 U.S.C. §§ 4011-4021  
15 C.F.R. Part 325

**Description:** Cross-Border Services

Title III of the *Export Trading Company Act of 1982* authorizes the Secretary of Commerce to issue "certificates of review" with respect to export conduct. The Act provides for the issuance of a certificate of review where the Secretary determines, and the Attorney General concurs, that the export conduct specified in an application will not have the anticompetitive effects proscribed by the Act. A certificate of review limits the liability under federal and state antitrust laws in engaging in the export conduct certified.

Only a "person" as defined by the Act can apply for a certificate of review. "Person" means "an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between such persons."

A foreign national or enterprise may receive the protection provided by a certificate of review by becoming a "member" of a qualified applicant. The regulations define "member" to mean "an entity (U.S. or foreign) that is seeking protection under the certificate with the applicant. A member may be a partner in a partnership or a joint venture; a shareholder of a corporation; or a

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participant in an association, cooperative, or other form of profit or nonprofit organization or relationship, by contract or other arrangement."

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**Sector:** Business Services

**Obligations Concerned:** National Treatment (Article)  
Local Presence (Article )

**Level of Government:** Central

**Measures:** *Export Administration Act of 1979, as amended, 50 U.S.C. app. 2401-2420.*

*International Emergency Economic Powers Act, 50 U.S.C. 1701-1706.*

*Export Administration Regulations, 15 C.F.R. Parts 730 through 774.*

**Description:** Cross-Border Services

With some limited exceptions, exports and reexports of commodities, software and technology subject to the Export Administration Regulations require a license from the Bureau of Industry and Security, U.S. Department of Commerce (BIS). Certain activities of U.S. persons, wherever located, also require a license from BIS. An application for a license must be made by a person in the United States.

In addition, release of controlled technology to a foreign national in the United States is deemed to be an export to the home country of the foreign national and requires the same written authorization from BIS as an export from the territory of the United States.

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**Sector:** Mining

**Obligations Concerned:** National Treatment (Article)  
Most-Favored-Nation Treatment (Article)

**Level of Government:** Central

**Measures:** *Mineral Lands Leasing Act of 1920*, 30 U.S.C. Chapter 3A  
10 U.S.C. § 7435

**Description:** Investment

Under the Mineral Lands Leasing Act of 1920, aliens and foreign corporations may not acquire rights-of-way for oil or gas pipelines, or pipelines carrying products refined from oil and gas, across on-shore federal lands or acquire leases or interests in certain minerals on on-shore federal lands, such as coal or oil. Non-U.S. citizens may own a 100 percent interest in a domestic corporation that acquires a right-of-way for oil or gas pipelines across on-shore federal lands, or that acquires a lease to develop mineral resources on on-shore federal lands, unless the foreign investor's home country denies similar or like privileges for the mineral or access in question to U.S. citizens or corporations, as compared with the privileges it accords to its own citizens or corporations or to the citizens or corporations of other countries (30 U.S.C. §§ 181, 185(a)).

Nationalization is not considered to be denial of similar or like privileges.

Foreign citizens, or corporations controlled by them, are restricted from obtaining access to federal leases on Naval Petroleum Reserves if the laws, customs or regulations of their country deny the privilege of leasing public lands to citizens or corporations of the United States [(10 U.S.C. § 7435)].

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**Sector:** All Sectors

**Obligations Concerned:** National Treatment (Article)  
Most-Favored-Nation Treatment (Article)

**Level of Government:** Central

**Measures:** 22 U.S.C. §§ 2194 and 2198(c)

**Description:** Investment

The Overseas Private Investment Corporation insurance and loan guarantees are not available to certain aliens, foreign enterprises or foreign-controlled domestic enterprises.

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**Sector:** Air Transportation

**Obligations Concerned:** National Treatment (Article)  
Most-Favored-Nation Treatment (Article)  
Senior Management and Boards of Directors (Article)

**Level of Government:** Central

**Measures:** 49 U.S.C. Subtitle VII, *Aviation Programs*  
14 C.F. R. Part 297 (foreign freight forwarders); 14 C.F.R. Part 380, Subpart E (registration of foreign (passenger) charter operators)

**Description:** Investment

Only air carriers that are "citizens of the United States" may operate aircraft in domestic air service (cabotage) and may provide international scheduled and non-scheduled air service as U.S. air carriers.

U.S. citizens also have blanket authority to engage in indirect air transportation activities (air freight forwarding and passenger charter activities other than as actual operators of the aircraft). In order to conduct such activities, non-U.S. citizens must obtain authority from the Department of Transportation. Applications for such authority may be rejected for reasons relating to the failure of effective reciprocity, or if the Department of Transportation finds that it is in the public interest to do so.

Under 49 U.S.C. § 40102, a "citizen of the United States" means:

- (a) an individual who is a U.S. citizen;
- (b) a partnership in which each member is a U.S. citizen; or
- (c) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers

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are U.S. citizens, and at least 75 percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 U.S.C. § 40102(15)).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.



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**Sector:** Air Transportation

**Obligations Concerned:** National Treatment (Articles)  
Most-Favored-Nation Treatment (Articles)  
Local Presence (Article)  
Senior Management and Boards of Directors (Article)

**Level of Government:** Central

**Measures:** 49 U.S.C., Subtitle VII, Aviation Programs, § 41703  
14 C.F.R. Part 375

As qualified by paragraph 2 of the **Description** element

**Description:** Cross-Border Services

1. Authorization from the Department of Transportation is required for the provision of specialty air services in the territory of the United States.\*

Investment

2. "Foreign civil aircraft" require authority from the Department of Transportation to conduct specialty air services in the territory of the United States. "Foreign civil aircraft" are aircraft of foreign registry or aircraft of U.S. registry that are owned, controlled or operated by persons who are not citizens or permanent residents of the United States (14 C.F.R. § 375.1). Under 49 U.S.C. § 40102, a "citizen of the United States" means:

- (a) an individual who is a U.S. citizen;
- (b) a partnership in which each member is a U.S. citizen; or
- (c) a U.S. corporation of which the president and at least two-thirds of the board of directors and other managing officers

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are U.S. citizens, and at least seventy-five percent of the voting interest in the corporation is owned or controlled by U.S. citizens (49 U.S.C. § 40102(15)).

In addition, this statutory requirement has historically been interpreted by the Department of Transportation (and the Civil Aeronautics Board before it) to require that an air carrier in fact be under the actual control of U.S. citizens. The Department of Transportation makes this determination on a case-by-case basis, and has provided guidance as to certain lines of demarcation. For example, total foreign equity investment of up to 49 percent (with a maximum of 25 percent being voting stock), by itself, is not construed as indicative of foreign control. See Department of Transportation Order 91-1-41, January 23, 1991.

\* A person of Singapore will be able to obtain such an authorization given Singapore's acceptance of the definition of specialty air in the Cross-Border Services Chapter.

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**Sector:** Transportation Services - Customs Brokers

**Obligations Concerned:** National Treatment (Articles)  
Local Presence (Article)

**Level of Government:** Central

**Measures:** 19 U.S.C. § 1641(b)

**Description:** Cross-Border Services and Investment

A customs broker's license is required to conduct customs business on behalf of another person. Only U.S. citizens may obtain such a license. A corporation, association or partnership established under the law of any state may receive a customs broker's license if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license.

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<b>Sector:</b>	All Sectors
<b>Obligations Concerned:</b>	National Treatment (Article) Most-Favored-Nation Treatment (Article)
<b>Level of Government:</b>	Central
<b>Measures:</b>	<i>Securities Act of 1933</i> , 15 U.S.C. §§ 77C(b), 77f, 77g, 77h, 77j and 77s(a)  17 C.F.R. §§ 230.251 and 230.405  <i>Securities Exchange Act of 1934</i> , 15 U.S.C. §§ 78l, 78m, 78o(d) and 78w(a)  17 C.F.R. § 240.12b-2
<b>Description:</b>	<u>Investment</u>  Foreign firms, except for certain Canadian issuers, may not use the small business registration forms under the Securities Act of 1933 to register public offerings of securities or the small business registration forms under the Securities Exchange Act of 1934 to register a class of securities or file annual reports.

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**Sector:** Communications - Radiocommunications

**Obligations Concerned:** National Treatment (Article )

**Level of Government:** Central

**Measures:** 47 U.S.C. § 310  
Foreign Participation Order 12 FCC Red 23841 (1997)

**Description:** Investment

The United States reserves the right to restrict ownership of radio licenses in accordance with the above statutory and regulatory provisions. Radiocommunications consists of all communications by radio, including broadcasting.

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**Sector:** Professional Services - Patent Attorneys, Patent Agents, and other practice before the Patent and Trademark Office

**Obligations Concerned:** National Treatment (Article)  
Most-Favored-Nation Treatment (Article)  
Local Presence (Article)

**Level of Government:** Central

**Measures:** 35 U.S.C. Chapter 3 (practice before the U.S. Patent and Trademark Office)

37 C.F.R. Part 10 (representation of others before the U.S. Patent and Trademark Office)

**Description:** Cross-Border Services

As a condition to be registered to practice for others before the U.S. Patent and Trademark Office (USPTO):

- (a) a patent attorney must be a U.S. citizen or an alien lawfully residing in the United States (37 C.F.R. § 10.6(a));
- (b) a patent agent must be a U.S. citizen, an alien lawfully residing in the United States or a non-resident who is registered to practice in a country that permits patent agents registered to practice before the USPTO to practice in that country ; the latter is permitted to practice for the limited purpose of presenting and prosecuting patent applications of applicants located in the country in which he or she resides (37 C.F.R. § 10.6(c)); and
- (c) a practitioner in trademark and non-patent cases must be an attorney licensed in the United States, a "grandfathered" agent, an attorney licensed to practice in a country that accords equivalent treatment to attorneys licensed in the United States, or an agent registered to practice in such a country ; the latter two are permitted to practice for the limited purpose of representing parties located in the

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country in which he or she resides (37 C.F.R. § 10.14(a)-(c)).

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**Sector:** All Sectors

**Obligations Concerned:** National Treatment (Article)  
Most-Favored-Nation Treatment (Article)  
Local Presence  
Performance Requirements  
Senior Management and Boards of Directors

**Level of Government:** Regional

**Measures:** All existing non-conforming measures of all states, the District of Columbia, and Puerto Rico

**Description:** Investment and Cross-Border Services



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**Annex II -- Schedule of United States**

**Sector:** Communications

**Obligations Concerned:** Most-Favored-Nation Treatment (Article)

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that accords differential treatment to persons of other countries due to application of reciprocity measures or through international agreements involving sharing of the radio spectrum, guaranteeing market access or national treatment with respect to the one-way satellite transmission of direct-to-home (DTH) and direct broadcasting satellite (DBS) television services and digital audio services.

**Existing Measures:**

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**Sector:** Communications - Cable Television

**Obligations Concerned:** National Treatment (Articles)  
Most-Favored-Nation Treatment (Articles)  
Local Presence (Article)  
Senior Management and Boards of Directors (Article)

**Description:** Investment and Cross-Border Services

The United States reserves the right to adopt or maintain any measure that accords equivalent treatment to persons of any country that limits ownership by persons of the United States in an enterprise engaged in the operation of a cable television system in that country.

**Existing Measures:**

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**Sector:** Social Services

**Obligations Concerned:** National Treatment (Articles)  
Most-Favored-Nation Treatment (Articles)  
Local Presence (Article)  
Senior Management and Boards of Directors (Article)  
Performance Requirements (Article)

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care.

**Existing Measures:**

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**Sector:** Minority Affairs

**Obligations Concerned:** National Treatment (Articles)  
Local Presence (Article)  
Performance Requirements (Article)  
Senior Management and Boards of Directors (Article)

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure according rights or preferences to socially or economically disadvantaged minorities, including corporations organized under the laws of the State of Alaska in accordance with the *Alaska Native Claims Settlement Act*.

**Existing Measures:** *Alaska Native Claims Settlement Act*, 43 U.S.C. §§ 1601 et seq.

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**Sector:** Transportation

**Obligations Concerned:** National Treatment (Articles)  
Most-Favored-Nation Treatment (Articles)  
Local Presence (Article)  
Performance Requirements (Article)  
Senior Management and Boards of Directors (Article)

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure relating to the provision of maritime transportation services and the operation of U.S.-flagged vessels, including the following:

- (a) requirements for investment in, ownership and control of, and operation of vessels and other marine structures, including drill rigs, in maritime cabotage services, including maritime cabotage services performed in the domestic offshore trades, the coastwise trades, U.S. territorial waters, waters above the continental shelf and in the inland waterways;
- (b) requirements for investment in, ownership and control of, and operation of U.S.-flagged vessels in foreign trades;
- (c) requirements for investment in, ownership and control of, and operation of vessels engaged in fishing and related activities in U.S. territorial waters and the Exclusive Economic Zone;
- (d) requirements related to documenting a vessel under the U.S. flag;
- (e) promotional programs, including tax benefits, available for shipowners, operators and vessels meeting certain requirements;
- (f) certification, licensing and citizenship requirements for crew members on U.S.-flagged vessels;

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- (g) manning requirements for U.S.-flagged vessels;
- (h) all matters under the jurisdiction of the Federal Maritime Commission;
- (i) negotiation and implementation of bilateral and other international maritime agreements and understandings;
- (j) limitations on longshore work performed by crew members;
- (k) tonnage duties and light money assessments for entering U.S. waters; and
- (l) certification, licensing and citizenship requirements for pilots performing pilotage services in U.S. territorial waters.

The following activities are not included in this reservation:

- (a) boat cleaning, canal operation, dismantling of vessels, operation of marine railways for drydocking, marine surveyors, except cargo, marine wrecking of vessels for scrap and ship classification societies.

**Existing Measures:**

*Merchant Marine Act of 1920*, §§ 19 and 27, 46 App. U.S.C. §876 and § 883 et seq.

*Jones Act Waiver Statute*, 64 Stat 1120, 46 U.S.C. App., note preceding Section 1

*Shipping Act of 1916*, 46 U.S.C. App. §§ 802 and 808

*Merchant Marine Act of 1936*, 46 U.S.C. App. §§ 1151 et seq., 1160-61, 1171 et seq., 1241(b), 1241-1, 1244, and 1271 et seq.

*Merchant Ship Sales Act of 1946*, 50 U.S.C. App. § 1738

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46 App. U.S.C. §§ 121, 292 and 316  
46 U.S.C. §§ 12101 et seq. And 31301 et seq.  
46 U.S.C. §§ 8904 and 31328(2)

*Passenger Vessel Act*, 46 App. U.S.C. § 289  
42 U.S.C. § 9601 et seq.; 33 U.S.C. § 2701 et seq.; 33 U.S.C. §  
1251 et seq.  
46 U.S.C. §§ 3301 et seq., 3 701 et seq., 8103 and 12107(b)

*Shipping Act of 1984*, 46 App. U.S.C. §§ 1708 and 1712

The Foreign Shipping Practices Act of 1988 (46 App. U.S.C.  
1710a), the Merchant Marine Act, 1920 (46 App. U.S.C. "861 et  
seq.), and the Shipping Act of 1984 (46 App. U.S.C. "1701 et seq.).

Alaska North Slope - 104 Pub. L. 58; 109 Stat. 557;  
Longshore restrictions and reciprocity - 8 U.S.C. '1101 et seq.; and  
Vessel escort provisions - Section 1119 of Pub. L. 106-554, as  
amended.

*Nicholson Act*, 46 App. U.S.C. §§ 251  
*Commercial Fishing Industry Vessel Anti-Reflagging Act* of 1987,  
46 U.S.C. § 2101 and 46 U.S.C. § 12108  
43 U.S.C. § 1841  
22 U.S.C. § 1980

*Intercoastal Shipping Act*, 46 U.S.C. App. § 843  
46 U.S.C. § 9302, 46 U.S.C. § 8502; Agreement Governing the  
Operation of Pilotage on the Great Lakes, Exchange of Notes at  
Ottawa, August 23, 1978, and March 29, 1979, TIAS 9445

*Magnuson Fishery Conservation and Management Act*, 16 U.S.C.  
§§ 1801 et seq.  
19 U.S.C.1466

*North Pacific Anadramous Stocks Convention Act of 1972, P.L.*  
102-587; *Oceans Act of 1992*, Title VII

*Tuna Convention Act*, 16 U.S.C. § 951 et seq. .

*South Pacific Tuna Act of 1988*, 16 U.S.C. § 973 et seq.

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*Northern Pacific Halibut Act of 1982, 16 U.S.C. § 773 et seq.*

*Atlantic Tunas Convention Act, 16 U.S.C. § 971 et seq.*

*Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. § 2431 et seq.*

*Pacific Salmon Treaty Act of 1985, 16 U.S.C. § 3631 et seq.*

*American Fisheries Act of 1998, P.L.105-277, Division C, Title II, Subtitle I.*



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**Sector:** All

**Obligations Concerned:** Market Access

**Description:** Cross-Border Services and Investment

The United States reserves the right to adopt or maintain any measure that is not inconsistent with the United States' obligations under Article XVI of the General Agreement on Trade in Services.

**Existing Measures:**

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**Sector:** All

**Obligations Concerned:** Most-Favored-Nation Treatment (Article)\*

**Description:** Investment and Cross-Border Services

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Agreement.

The United States reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Agreement involving:

- (a) aviation;
- (b) fisheries; or
- (c) maritime matters, including salvage.

**Existing Measures:**